



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: HAKON JOHANSON, INTERIM WATER RESOURCES
ADMINISTRATOR, 480.503.6902

THROUGH: MARC SKOCYPEC, DEPUTY TOWN MANAGER 480.503.6862

MEETING DATE: SEPTEMBER 20, 2012

SUBJECT: AMENDMENT NO. 2 TO THE ONE YEAR CENTRAL ARIZONA
PROJECT WATER LEASE AMONG THE UNITED STATES OF
AMERICA, THE SAN CARLOS APACHE TRIBE, AND THE TOWN OF
GILBERT, ARIZONA. CONTRACT # 2011-4108-0063

STRATEGIC INITIATIVE:

Community Livability

The San Carlos Apache Tribe lease will enable Gilbert to access 20,000 acre-feet of CAP water which will be recharged to earn Long Term Storage Credits to be pledged to Gilbert's Assured Water Supply and allow Gilbert to offset future groundwater pumping.

LEGAL REVIEW☒ Complete☐ N/A**FINANCIAL REVIEW**☒ Complete☐ N/A**RECOMMENDED MOTION**

A MOTION TO APPROVE AMENDMENT NO. 2 TO THE ONE YEAR CENTRAL ARIZONA PROJECT WATER LEASE WITH THE SAN CARLOS APACHE TRIBE WHICH WILL EXTEND THE CONTRACT ONE ADDITIONAL YEAR AND AUTHORIZE THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS

BACKGROUND/DISCUSSION

Council originally approved the Central Arizona Project ("CAP") One Year CAP water lease with the San Carlos Apache Tribe ("Tribe") at the July 27, 2010 Council meeting. Amendment No. 1 to the One

Year CAP water lease was approved May 17, 2012, extending the lease for an additional year. This Amendment No. 2 again extends the One Year CAP water lease for another year through December 31, 2013. Amendment No. 2 recites the amounts paid and the amount of CAP water leased from the Tribe during 2011 and 2012 and also provides Gilbert up to 20,000 acre feet of CAP water between the Effective Date and the end of 2013.

Gilbert will be billed and pay the San Carlos Apache Tribe \$19 per acre feet for a total of 20,000 acre feet of CAP water deliverable in 2013 under Amendment No.2 or \$380,000 within 30 days of the execution of Amendment No. 2 by all parties. Gilbert will also pay the costs charged by the Central Arizona Water Conservation District (CAWCD) for all water scheduled and delivered to Gilbert. The CAWCD cost for 20,000 acre-feet for 2013 is \$ 2,580,000 (20,000 * \$129), plus the cost to recharge at a CAP facility, \$ 160,000 (20,000 * \$ 8). The total cost for Amendment No. 2 is \$ 3,120,000, unless a lesser amount is actually delivered in 2013. The CAP water secured under Amendment No. 2 will be stored under existing recharge storage agreements earning long term storage credits to offset future pumping, which qualifies for Gilbert's water supply portfolio for the Arizona Department of Water Resources's Assured Water Supply Designation.

The Contract was reviewed and approved as to form by Attorney William Sullivan of Curtis, Goodwin, Sullivan, Udall & Schwab, PLC.

FINANCIAL IMPACT

The total cost for the One Year lease is \$ 3,120,000. The costs are an anticipated expenditure funded through CIP WA052.

The financial impact was reviewed by Kurt Sharp, Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of Amendment No. 2 to the Central Arizona Project water lease with the San Carlos Apache Tribe, which will extend the contract one additional year.

Respectfully submitted,

Hakon Johanson,
Interim Water Resources Administrator

Attachments and Enclosures:
Amendment No. 2

AMENDMENT NO. 2
TO
CENTRAL ARIZONA PROJECT WATER LEASE
AMONG
THE UNITED STATES OF AMERICA,
THE SAN CARLOS APACHE TRIBE,
AND
THE TOWN OF GILBERT, ARIZONA

**AMENDMENT NO. 2
TO
CENTRAL ARIZONA PROJECT WATER LEASE
AMONG
THE UNITED STATES OF AMERICA,
THE SAN CARLOS APACHE TRIBE,
AND
THE TOWN OF GILBERT, ARIZONA**

1. PREAMBLE

This Central Arizona Project Water Lease Amendment No. 2 ("Lease Amendment No. 2") is entered into among the United States of America, the San Carlos Apache Tribe (Tribe), and the Town of Gilbert, Arizona ("Gilbert") (collectively referred to as the "Parties").

2. RECITALS

2.1 WHEREAS, the Parties to this "Lease Amendment No. 2" are also Parties to the San Carlos Apache Tribe Water Rights Settlement Agreement, dated March 30, 1999 ("San Carlos Apache Agreement");

2.2 WHEREAS, pursuant to Section 3710(c) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Title XXXVII of Public Law 102-575, as amended (the "Act"), the United States confirmed the San Carlos Apache Agreement;

2.3 WHEREAS, pursuant to Section 3706(b) of the Act, the Secretary was directed to amend the CAP water delivery contract between the Tribe and the United States dated December 11, 1980 ("Tribal CAP Delivery Contract"), to authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract to various entities, including Gilbert;

2.4 WHEREAS, pursuant to Section 3706(b) of the Act, and the San Carlos Apache Agreement, the United States and the Tribe have executed Amendment No. 3 to the Tribe's CAP Delivery Contract, which authorizes the Tribe to lease its CAP water under specified terms and

conditions;

2.5 WHEREAS, the Parties entered into a Central Arizona Project Water Lease on November 4, 2010, hereinafter referred to as "Lease" in which the Tribe leased to Gilbert the right to the delivery of not to exceed 20,000 acre-feet of the Tribe's CAP Water;

2.6 WHEREAS, the Parties entered into an Amendment No. 1 to the Lease on June 28, 2012, herein referred to as "Amendment No. 1", in which the Parties increased the maximum annual quantity being leased in 2011 from 20,000 acre-feet to 25,925 acre-feet, and continued the Lease arrangements for a lease of 20,000 acre-feet for another year from January 1, 2012 to December 31, 2012;

2.7 WHEREAS, the Parties desire to continue the Lease arrangements for 20,000 acre-feet to be leased for another year from January 1, 2013 to December 31, 2013;

2.8 WHEREAS, the City of Scottsdale, by letter dated (Date and new letter info will be placed here);

2.9 WHEREAS, the City of Globe, by letter dated (Date and new letter info will be placed here);

2.10 WHEREAS, the Parties acknowledge that the covenants and benefits under this Lease Amendment No. 2 represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

NOW, THEREFORE, the Parties agree as follows:

3. **AMENDMENT NO. 1** Amendment No. 1 is hereby superseded and replaced in its entirety by this Lease Amendment No. 2.

4. **AMENDED PROVISIONS OF LEASE**

4.1 Article 3.10 defining "**Lease Water**" is hereby superseded and replaced in its entirety with the following:

"3.10 "**Lease Water**" under this Lease shall mean not to exceed 25,925 acre-feet in 2011, 20,000 acre-feet in 2012, and 20,000 acre-feet in 2013, of the Tribe's CAP Water subject to the Tribe's CAP Delivery Contract."

4.2 Article 4.2 **Subject of Lease** of the Lease is hereby amended by:

4.2.1 Deleting "20,000 acre-feet" and replacing that amount with "25,925 acre-feet in 2011, 20,000 acre-feet in 2012, and 20,000 acre-feet in 2013"; and

4.2.2 Deleting "in calendar year 2010 if possible, but no later than the term of the Lease" and replacing same with "by December 31, 2013".

4.3 Article 4.3 **Term of Lease** is hereby amended by deleting "one year after the Effective Date. Nothing in this Lease shall be construed as extending the term of this Lease beyond 12 consecutive months after the Effective Date" and replacing same with "December 31, 2013".

4.4 Article 4.10 **Consideration for Lease** is hereby deleted in its entirety and replaced with the following:

"4.10 **Consideration for Lease**. For each year this Lease is in effect, Gilbert shall pay directly to the Tribe the sum of Nineteen Dollars (\$19.00) per acre-foot for all CAP Water delivered pursuant to this Lease, up to 25,925 acre-feet in 2011, 20,000 acre-feet in 2012, and 20,000 acre-feet in 2013. The amount of \$380,000.00 was paid to the Tribe for 20,000 acre-feet of CAP Water for the lease year 2011. The amount of \$492,575.00 was paid to the Tribe by Gilbert by checks dated June 4, 2012, and received by the Tribe on June 8, 2012. That

\$492,575.00 payment was comprised of the following components: (1) \$112,575.00 for an additional 5,925 acre-feet of CAP Water which had been delivered for the lease year 2011; and (2) \$380,000.00 for 20,000 acre-feet of CAP Water for the lease year 2012. The amount of \$380,000 for 20,000 acre-feet of CAP Water for the lease year 2013 shall be paid to the Tribe within 30 days of execution of this Lease Amendment No. 2. The amount timely paid the Tribe by Gilbert for CAP Water not delivered during the applicable lease year for any reason unrelated to Gilbert's performance obligations or default under the terms of this Lease shall be subject to adjustment and refund as soon as reasonably practicable after the end of the applicable lease year using the unit price set forth in this Subsection 4.10, without additional credit for interest or earnings on the pre-paid amount."

5. **OTHER PROVISIONS OF LEASE UNAFFECTED** Except as specifically amended by this Lease Amendment No. 2, the Lease dated November 4, 2010, among the Parties, remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Lease Amendment No. 2 on
the dates shown below.

THE UNITED STATES OF AMERICA

BUREAU OF INDIAN AFFAIRS

By: _____

Its: _____

Date: _____

THE UNITED STATES OF AMERICA

BUREAU OF RECLAMATION

By _____

Its: _____

Date: _____

APPROVED AS TO
LEGAL SUFFICIENCY:

Field Solicitor

SAN CARLOS APACHE TRIBE

By _____

Its: _____

Date: _____

ATTEST:

Secretary

APPROVED AS TO FORM:

Joe P. Sparks, Esq.
Its: Special Counsel

TOWN OF GILBERT

By _____

Its: _____

Date: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

DRAFT